IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2138 OF 2005

Shri Anandrao Jadhav & Anr. ... Petitioners

V/s.

Shri Shivneri Sahakari Bank Ltd. & Ors. ... Respondents

Mr.Arif Bookwala with G.S. Hiranandani for Petitioner
Mr.A.A. Kumbhakoni, Addl. Advocate General for Respondent No.1

CORAM: **S.A. BOBDE, J.**

DATED: **JUNE 15, 2005**

P.C.:

. Rule, returnable forthwith. By consent of the parties, Rule called out and heard finally.

2. This Petition is by a person who admittedly is not a party to the dispute in which the impugned interlocutory orders are made. Two disputes are filed by Shri Shivneri Sahakari Bank Limited against one Amol Ajitrao Shinde. In the said disputes by an interim order, the Cooperative Court, Kolhapur has held that the Bank aforesaid shall have a charge over the right of the opponent Amol Ajitrao shinde in the building which is under construction on property bearing CS No.1082/1. The property is said to belong to the Petitioner as owner.

3. This order has been upheld by the Cooperative Appellate Court. The Petitioner claims to be an owner of the property bearing CS No.1082/1 and strongly opposes the creation of any charge on the property. According to the petitioner, such a charge could not have been created since the opponent Amol Ajitrao Shinde has borrowed money from the Bank and the Petitioner has given its property for development to a firm in which the said Amol is a partner, and not to Amol. Therefore, any borrowing by one of the partners from the Bank ought not to result in the creation of any charge on the petitioner's property. This involves a possible dispute of facts and, therefore, I consider it appropriate to direct the Petitioner to apply for being joined as a party to the dispute Nos.S.C.C.K. No.411/2004 and S.C.C.K. No.412/2004, rather than entertain a writ petition at the instance of the petitioner who has admittedly not been a party to the dispute till now.

4. The Petitioner shall have right to apply for variation and/or recall of the impugned orders. The learned Counsel for Respondent No.1 who has raised the objection as to tenability of this Petition at the instance of the Petitioner agrees not to oppose the impleadment of the petitioner and the right of the

petitioner to apply for variation and/or recall of the order. The trial Court shall decide the matter on its own merits without being influenced by any observation made earlier or by this Court.

5. Lastly, Mr.Bookwala, learned Counsel for the Petitioner, submits that the Bank has given an advertisement contrary to the order passed by the Cooperative Court. Mr.Kumbhakoni, learned Additional Advocate General denies that the public notice is at variance with the orders of the Court. Without entering into that controversy, it is hereby directed that the parties shall ensure that any public notice or advertisement is strictly in accordance with the orders of this Court.

6. The trial Court shall decide the petitioner’s application as expeditiously as possible.

7. Writ Petition is disposed off accordingly.